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10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ORANGE**

12 PEOPLE OF THE STATE OF CALIFORNIA,
13 *ex rel.* Maureen F. Gorsen, Director, California
14 Department of Toxic Substances Control,

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17 Plaintiff,

18 v.

19 CNK CAPITAL, INC., doing business as
20 SANTA ANA PLATING; ANTHONY KAKUK,
21 and individual; COLLETTE KAKUK, an
individual; RICHARD AMEZAGA, an individual;
and DOES 1-10,

22 Defendants.
23

Case No. 07CC08673

**PROPOSED CONSENT
JUDGMENT AS TO
DEFENDANTS ANTHONY
KAKUK AND COLLETTE
KAKUK**

24 Plaintiff, the People of the State of California, *ex rel.* Maureen F. Gorsen, Director
25 of the California Department of Toxic Substances Control ("Department"), and Defendants
26 Anthony Kakuk and Collette Kakuk, having consented to the entry of this Consent Judgment
27 ("Judgment") prior to the taking of any proof and without trial or adjudication of any fact or law
28 herein; and

1 The Court having considered the pleadings, which consist of the Complaint, the
2 parties' Stipulation for Entry of Consent Judgment as to Defendants Anthony Kakuk and Collette
3 Kakuk, and the proposed Consent Judgment;

4 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

5 **JURISDICTION AND VENUE**

6 1. Jurisdiction exists over this matter pursuant to Health and Safety Code
7 sections 25181, 25189 and 25189.2. Venue is proper pursuant to Health and Safety Code section
8 25183.

9 **APPLICABILITY**

10 2. Judgment in this matter shall be entered against Defendants Anthony
11 Kakuk and Collette Kakuk. The provisions set forth in this Judgment shall apply to and be
12 binding upon Defendants Anthony Kakuk and Collette Kakuk, in their individual capacities,
13 who shall be jointly and severally liable. Unless otherwise stated, all obligations are imposed
14 upon Defendants Anthony Kakuk and Collette Kakuk by the terms of this Judgment and are
15 ordered pursuant to California Health and Safety Code sections 25181, 25184, 25189, and
16 25189.2.

17 **MONETARY RELIEF**

18 3. Defendants Anthony Kakuk and Collette Kakuk shall be jointly and
19 severally liable to the Department for the total sum of six hundred thousand dollars
20 (\$600,000.00), plus interest as provided in paragraph 3.4 of this judgment, in civil penalties
21 which shall be paid to the Department as follows:

22 3.1. Within ten (10) days from entry of this Judgment, Defendants Anthony
23 Kakuk and Collette Kakuk shall pay the Department the sum of one-hundred thousand dollars
24 (\$100,000.00) as partial payment.

25 3.2. Defendants Anthony Kakuk and Collette Kakuk shall pay the Department
26 the sum of sixty thousand dollars (\$60,000.00) within two (2) years from entry of this Judgment
27 and in quarterly installments as follows: No later than ninety (90) days from entry of this
28 Judgment, Defendants Anthony Kakuk and Collette Kakuk shall pay the Department the sum of

1 seven thousand five hundred dollars (\$7,500.00) as partial payment; No later than one hundred
2 eighty (180) days from entry of this Judgment, Defendants Anthony Kakuk and Collette Kakuk
3 shall pay the Department the sum of seven thousand five hundred dollars (\$7,500.00) as partial
4 payment; No later than two hundred seventy (270) days from entry of this Judgment, Defendants
5 Anthony Kakuk and Collette Kakuk shall pay the Department the sum of seven thousand five
6 hundred dollars (\$7,500.00) as partial payment; No later than three hundred sixty (360) days
7 from entry of this Judgment, Defendants Anthony Kakuk and Collette Kakuk shall pay the
8 Department the sum of seven thousand five hundred dollars (\$7,500.00) as partial payment; No
9 later than four hundred fifty (450) days from entry of this Judgment, Defendants Anthony Kakuk
10 and Collette Kakuk shall pay the Department the sum of seven thousand five hundred dollars
11 (\$7,500.00), as partial payment; No later than five hundred forty (540) days from entry of this
12 Judgment, Defendants Anthony Kakuk and Collette Kakuk shall pay the Department the sum of
13 seven thousand five hundred dollars (\$7,500.00) as partial payment; No later than six hundred
14 thirty (630) days from entry of this Judgment, Defendants Anthony Kakuk and Collette Kakuk
15 shall pay the Department the sum of seven thousand five hundred dollars (\$7,500.00) as partial
16 payment; and no later than seven hundred twenty (720) days from entry of this Judgment,
17 Defendants Anthony Kakuk and Collette Kakuk shall pay the Department the sum of seven
18 thousand five hundred dollars (\$7,500.00) as partial payment.

19 3.3. Except as otherwise provided in paragraph 5 of this Judgment, Defendants
20 Anthony Kakuk and Collette Kakuk shall pay the Department the sum of four hundred forty
21 thousand dollars (\$440,000.00), plus any accrued and unpaid interest as provided in paragraph
22 3.4, below, no later than three (3) years from entry of this Judgment.

23 3.4. Defendants Anthony Kakuk and Collette Kakuk agree to pay interest on
24 the principal sum of six hundred thousand dollars (\$600,000.00) in civil penalties at the rate
25 established pursuant to Cal. Health and Safety Code section 25360.1. Interest shall begin to
26 accrue immediately upon entry of this Judgment.

27 3.5. The payments in civil penalties required pursuant to this Judgment shall be
28 made by certified or cashier's check, payable to the "Department of Toxic Substances Control,"

1 identify the name and case number of this matter "OCSC Case No. 07CC08673," specify the
2 time period the payment covers, and delivered to:

3 Department of Toxic Substances Control
4 Accounting Office
5 1001 I Street
6 P.O. Box 806
7 Sacramento, California 95812-0806

8 A photocopy of each check shall be sent to:

9 Charles A. McLaughlin, Chief
10 State Oversight and Enforcement Branch
11 Enforcement and Emergency Response Program
12 Department of Toxic Substances Control
13 8800 Cal Center Drive
14 Sacramento, California 95826-3200

15 Department of Toxic Substances Control
16 Attention: Diane Sheridan, Chief
17 Audits and Special Investigations Unit
18 1001 I Street
19 P.O. Box 806
20 Sacramento, CA 95812-0806

21 and

22 Edward H. Ochoa, Deputy Attorney General
23 Office of the Attorney General
24 110 West A Street, Suite 1100
25 San Diego, CA 92101

26 3.6. If a due date for any of the payments falls on a Saturday, Sunday, federal
27 or state holiday, then the due date shall be the close of business on the next working day.

28 **ADDITIONAL STIPULATED PENALTIES**

FOR FAILURE TO COMPLY WITH PAYMENT SCHEDULE

4. If Defendants Anthony Kakuk or Collette Kakuk fail to meet the payment
deadlines for civil penalties set forth in paragraph 3.1 through 3.4 of this Judgment, Defendants
shall be obligated to pay the Department an additional amount of five hundred dollars (\$500.00)
per day, for each day following any such payment deadline during which Defendants have not

1 paid the amount owed.

2 **SATISFACTION OF CIVIL PENALTY PAYMENT REQUIREMENT**

3 5. In the event Defendants Anthony Kakuk and Collette Kakuk comply with
4 the terms contained in the parties' Stipulation for Entry of Consent Judgment and the terms of
5 this Judgment, including, but not limited to, making timely payments as required in paragraphs 3
6 through 3.2 and paragraphs 3.5 through 4 of this Judgment, the Department will waive the
7 portion of the outstanding civil penalty that is due pursuant to paragraph 3.3 of this Judgment
8 (\$440,000.00, plus accrued and unpaid interest as provided in paragraph 3.4). Defendants
9 Anthony Kakuk and Collette Kakuk shall not be relieved of any other obligation arising under
10 the parties' Stipulation for Entry of Consent Judgment or this Judgment.

11 **MODIFICATION OF CIVIL PENALTY PAYMENT REQUIREMENTS**

12 6. In the event that Defendants Anthony Kakuk and/or Collette Kakuk fail to
13 comply with the terms contained in the parties' Stipulation for Entry of Consent Judgment and
14 the terms of this Judgment, the full amount of civil penalties (\$600,000.00), plus accrued and
15 unpaid interest, minus any payments already made to the Department pursuant to this Judgment,
16 shall be immediately due and payable to the Department. If the Department determines that
17 Defendants Anthony Kakuk and/or Collette Kakuk have defaulted under the terms of the parties'
18 Stipulation for Entry of Consent Judgment or the terms of this Judgment, the Department will
19 provide Defendants with written notice of default. Defendants Anthony Kakuk and/or Collette
20 Kakuk may cure the default on the terms as required by the Department. If the Defendants fail to
21 cure the default as required, the Department may proceed to pursue all rights and remedies to
22 enforce this Judgment against Defendants Anthony Kakuk and/or Collette Kakuk.

23 6.1. Until payment has been made pursuant to paragraphs 3 through 4 of this
24 Judgment, or three (3) years following the entry of this Judgment, whichever is earlier,
25 Defendants Anthony Kakuk and Collette Kakuk shall be required to submit to the Department
26 personal and business related financial documentation, including, but not limited to, state and
27 federal income tax returns, annual and quarterly financial statements, statements of assets and
28 liabilities, and statements of income and expenses, as well as any additional documentation the

1 Department may require. Defendants Anthony Kakuk and Collette Kakuk shall certify the
2 financial documentation submitted to the Department as true and correct under penalty of
3 perjury.

4 6.2. The financial documentation shall be sent to the following within thirty
5 (30) days after being requested in writing by the Department:

6
7 Department of Toxic Substances Control
8 Attention: Diane Sheridan, Chief
9 Audits and Special Investigations Unit
10 1001 I Street
11 P.O. Box 806 Sacramento, CA 95812-0806

12 A copy of the cover letter transmitting the financial documentation shall be sent to Charles A.
13 McLaughlin at the address provided in paragraph 3.4 of this Judgment.

14 6.3. The Department shall review the financial documentation submitted by
15 the Defendants and the Department shall determine: (a) whether Defendants Anthony Kakuk
16 and/or Collette Kakuk are financially able to pay the Department more than \$7,500.00, plus
17 interest, in quarterly payments as required pursuant to paragraph 3.4 of this Judgment, and/or (b)
18 whether Defendants Anthony Kakuk and/or Collette Kakuk are financially able to pay the
19 Department the outstanding balance of \$440,000.00, plus interest, earlier than the three (3) years
20 provided under paragraph 3.4 of this Judgment.

21 6.4. In determining whether Defendants Anthony Kakuk and/or Collette Kakuk
22 are financially able to pay the Department more than \$7,500.00 in quarterly payments and/or pay
23 the outstanding balance sooner than three years, the Department will consider whether Defendant
24 Anthony Kakuk's or Defendant Collette Kakuk's financial condition has "*materially improved*"
25 since March 23, 2007, when Defendants last submitted financial documentation to the
26 Department. For purposes of this paragraph only, the term "*materially improved*" shall mean
27 either one or more of the following conditions: (a) either one or both of the Defendants' gross
28 receipts or gross sales from business operations have increased by twenty (20) percent or more;
(b) either one or both of the Defendants' "*total income*" has increased by twenty (20) percent or

1 more; (c) either one or both of the Defendants' assets, existing as of March 23, 2007, have
2 increased in value by twenty (20) percent or more; or (d) either one or both of the Defendants
3 have acquired more than a ten (10) percent ownership interest (direct or indirect) in any new
4 assets, including, but not limited to, personal and real property, that have a combined cash
5 equivalent or market value greater than fifteen thousand dollars (\$15,000.00). For purposes of
6 this Judgment, the term "total income" shall include income from all sources, including, but not
7 limited to employment income, income from government programs, pension income, investment
8 income, all gifts, inheritances, gifts of real or personal property by will or other means, bequeaths
9 and/or lottery winnings, all income required to be included in line item 22 of U.S. Individual
10 Income Tax Return Form 1040 (2006) (or any other "total income" line item in a comparable
11 federal income tax return form), and any other money income. If either one or both of the
12 Defendants expect to receive, or actually receive, gifts or inheritances of any personal or real
13 property, by will or other means, or any other property or assets valued at \$5,000.00 or more,
14 including, but not limited to, lottery winnings, the Defendant(s) shall immediately provide
15 written notice to the Department's representatives as follows:

16 Charles A. McLaughlin, Chief
17 State Oversight and Enforcement Branch
18 Enforcement and Emergency Response Program
19 Department of Toxic Substances Control
20 8800 Cal Center Drive
21 Sacramento, California 95826-3200

22 Department of Toxic Substances Control
23 Attention: Diane Sheridan, Chief
24 Audits and Special Investigations Unit
25 1001 I Street
26 P.O. Box 806
27 Sacramento, CA 95812-0806

28 Written notice to the Department shall be provided either within ten (10) calendar days of
receiving notice that said Defendant(s) is expected to receive said gift, property, or asset, or
within ten (10) calendar days of actually receiving said gift, property, or asset, whichever date is
earlier.

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1 6.5. In the event the Department determines that either one or both of the
2 Defendants' financial condition has materially improved, the Department shall notify the
3 Defendants in writing and establish: (a) a revised payment schedule, which may include a higher
4 installment payment and/or a shorter installment period, for payment of the sixty thousand dollars
5 (\$60,000.00), plus interest, in civil penalties required to be paid pursuant to paragraph 3.2 of this
6 Judgment, and/or (b) a revised payment schedule, which may include a shorter payment period,
7 for payment of the four hundred forty thousand dollars (\$440,000.00), plus interest, in civil
8 penalties required to be paid pursuant to paragraph 3.3 of this Judgment. Defendants Anthony
9 Kakuk and/or Collette Kakuk shall comply with the Department's written notification and make
10 payments to the Department as required pursuant to the revised payment schedule.

11 6.6. Defendants Anthony Kakuk and Collette Kakuk agree that until all
12 payments have been completed as required by this Judgment, except as otherwise provided in
13 paragraph 5 of this Judgment, Defendants shall not transfer any assets to the possession and
14 control of some other entity or individual without first notifying the Department in writing of the
15 proposed transfer so that the Department in its sole discretion may determine whether such
16 transfer will cause either Defendant to be unable to make the payments required pursuant to this
17 Judgment.

18 **NO INVOLVEMENT IN HAZARDOUS WASTE ACTIVITIES**

19 7. Defendants Anthony Kakuk and Collette Kakuk agree that they will not be
20 involved as owner (direct or indirect), operator, director, and/or consultant in any "hazardous
21 waste management activity" in California, as defined at Cal. Health and Safety Code section
22 25117.2, except as may be necessary to take environmental response actions at the Facility or to
23 otherwise comply with the requirements set forth in paragraph 10 of the Stipulation. The
24 prohibition from acting as an "operator" with regard to "hazardous waste management activity"
25 in this paragraph prohibits Defendants from occupying a position whereby Defendant(s) has
26 (have) the primary authority and responsibility for making decisions regarding "hazardous waste
27 management activity."

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1 **RETENTION OF JURISDICTION**

2 8. The Court shall retain jurisdiction of this matter to implement this
3 Judgment.

4 **ENFORCEMENT OF CONSENT JUDGMENT**

5 9. Either party may, by motion or order to show cause before the Superior
6 Court of Orange County, enforce the terms and conditions contained in this Judgment. Where a
7 failure to comply with this Judgment constitutes future violations of the Hazardous Waste
8 Control Law, Health and Safety Code section 25100 et seq., or other laws, independent of this
9 Judgment and/or those alleged in the Complaint, the Department is not limited to enforcement of
10 this Judgment, but may seek in another action, subject to satisfaction of any procedural
11 requirements, including notice requirements, whatever fines, costs, fees, penalties or remedies
12 are provided by law for failure to comply with the Hazardous Waste Control Law or other laws.
13 However, the rights of Defendants Anthony Kakuk and Collette Kakuk to defend themselves in
14 actions in law or equity shall not be abrogated or reduced in any fashion by the terms of this
15 paragraph and the Defendants shall be entitled to raise any and all applicable defenses, rights and
16 remedies. The Departments failure to seek enforcement of any provision of this Judgment shall
17 not be deemed a waiver of any rights by the Department, or in any way affect the validity of this
18 Judgment.

19 **MODIFICATION**

20 10. This Judgment may be modified from time to time by express written
21 agreement of the parties, with the approval of the Court, or by an order of the Court in
22 accordance with law.

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11. The Clerk of the Court is ordered to immediately enter this

IT IS SO ORDERED, ADJUDGED AND DECREED.

H. WARREN SIEGEL

Judge of the Superior Court